IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.2133 of 2004 (O&M)

Date of decision : 29.8.2006.

Jarnail Singh .....Appellant

versus

Paroat Singh and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Arun Bansal, Advocate
for the appellant.

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ORDER

HEMANT GUPTA, J. (oral)

C.M.No.5294-C of 2004.

CM is allowed. The delay of 108 days in refiling the appeal is condoned for the reasons mentioned in the application.

R.S.A.No.2133 of 2004

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the First Appellate Court, whereby his for declaration challenging the alienation affected by his father, was dismissed.

It is the case of the plaintiff also that his father inherited the property from his grand-father and, therefore, the property inherited in the hands of his father is a Joint Hindu Family property and in which he has a right by birth. However, the said argument is not tenable in view of the judgment of Hon'ble Supreme Court of India, reported in "**AIR 1986 S.C.-1753, Commissioner of Wealth Tax, Kanpur etc. versus Chander Sen etc.",** wherein while considering Section 8 of the Hindu Succession Act, 1956, it is held by the Court that the property of the father who dies intestate devolves on his son in his individual capacity and not as karta of his own

family. The Court has concluded in the following effect:-

> "**In view of the Preamble to the Act i.e. that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8, he takes it as karta of his own undivided family.**
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> **xx xx xx**
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> **It would be difficult to hold today the property which devolved on a Hindu under S.8 of the Hindu Succession Act would be HUF property in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in Class-I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in Class I of Scheduled under S.8 of the Act included widow, mother, daughter of predeceased son etc."**

In view of the aforesaid judgment, the property in the hands of Dewan Singh, cannot be said to be a Joint Hindu Family property in which the plaintiff can claim right by birth.

Thus, I find that the findings recorded by the First Appellate Courts cannot be said to be suffering from any patent illegality or irregularity so as to raise any substantial question of law in the second appeal for consideration of this Court.

Dismissed.

(HEMANT GUPTA)
JUDGE

August 29, 2006.

**mohinder*